

**American Federation of Nurses, Local 535, S.E.I.U.  
and Kaiser Foundation Hospitals. Case 31-CG-  
23**

May 9, 1994

**DECISION AND ORDER**

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On September 30, 1993, Administrative Law Judge Earledean V.S. Robbins issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, American Federation of Nurses, Local 535, S.E.I.U., its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup>In adopting the judge's findings, we note that holding a press conference at a hospital entrance would not, in itself, implicate Sec. 8(g) of the Act. The Respondent, however, did more than hold a press conference at a hospital entrance. Here, approximately 15 people, including agents of the Respondent, carried signs regarding staffing levels at health care institutions and were "milling around" at the hospital entrance. This, as the judge found, was "picketing," notwithstanding that the activity occurred in conjunction with a press conference. Accordingly, the Respondent was required under Sec. 8(g) to give 10 days' advance written notice prior to its picketing activity. Therefore, as the judge concluded, the Respondent violated the Act by failing to give the required notice.

*Alice Garfield, Esq.*, for the General Counsel.

*James Rutkowski, Esq.*, of Los Angeles, California, for the Respondent.

*Beverly Stuart, Esq.*, of Pasadena, California, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

EARLDEAN V.S. ROBBINS, Administrative Law Judge. This case was heard before me in Los Angeles, California, on May 5, 1993. The charge was filed by Kaiser Foundation Hospitals (Kaiser) and served on American Federation of Nurses, Local 535, S.E.I.U. (Respondent) on January 11, 1993. The complaint, which issued on February 24, 1993, alleges that Respondent picketed one of Kaiser's facilities without providing the 10-day written notice required by Section 8(g) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the posthearing briefs filed by the General Counsel and the Respondent, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all times material herein, Kaiser, a California nonprofit corporation, with offices and places of business in Pasadena and Los Angeles, California, has been engaged in providing hospital services. Kaiser, in the course and conduct of said business operations, annually derives gross revenues in excess of \$250,000 and annually purchases and receives goods or services valued in excess of \$50,000 directly from suppliers located outside the State of California.

The complaint alleges, Respondent admits, and I find that Kaiser is now, and has been at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. LABOR ORGANIZATION**

The complaint alleges, Respondent admits, and I find that, at all times material herein, Respondent has been a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Facts**

On January 6, 1993,<sup>1</sup> Dick Rogers, business agent for S.E.I.U. Local 399, informed Richard Broyer, area personnel director for Kaiser's Los Angeles Medical Center, by telephone that the International Union and three local unions, including Respondent, were planning to hold a press conference on the following day in front of the main entrance of the Kaiser Hospital on Sunset Boulevard. Rogers said the purpose of the press conference was to release the results of a national survey prepared by the International Union during the summer of 1992. Broyer asked why the Kaiser hospital had been chosen as the site of the press conference. Rogers said people would be there from Hollywood Presbyterian Hospital and from the County Hospital as well as from Kaiser, that the Kaiser location was centralized, a media location, and they felt they could get good press coverage there. Broyer asked if there would be any pickets. Rogers said there would be no pickets, that this was not an intent to bash Kaiser, that it was intended just to focus on the results of the survey.<sup>2</sup>

It is undisputed that a press conference was held at that location on January 7. Approximately 30-45 person were in attendance. Six or seven representatives of the three locals spoke. Media representatives were present and asked questions of the speakers. The event lasted 30-45 minutes. The parties stipulated that, during this period, approximately 15 persons, including 3 agents of Respondent,<sup>3</sup> carried signs bearing the names of various S.E.I.U. local unions, including Respondent. The parties further stipulated that the legends on

<sup>1</sup> Unless otherwise indicated, all dates herein will be in 1993.

<sup>2</sup> This is from the undisputed testimony of Richard Broyer.

<sup>3</sup> Charlene Masters, Gloria Lazarine, and Rhonda Goode.

these signs included “SEIU NURSES CARE,” “SEIU NURSES FOR SAFE AND QUALITY CARE,” “NO TIME TO TALK, NO TIME TO CARE,” and “SHORT-STAFFING IS LIFE THREATENING.” Although the record fails to establish that the participants engaged in organized patrolling, it is clear from the testimony that participants carrying signs milled around in a 30 to 35 feet area in front of the speakers platform and the hospital entrance.

### B. Position of the Parties

#### 1. The General Counsel’s position

The General Counsel’s position is straightforward in its reliance on a literal reading of the statute which requires, *inter alia*, a 10-day notice of intent to picket at any health care institution. It is undisputed that Respondent did not give such notice of its intent to engage in the January 7 activity. The General Counsel contends that the January 7 event was not just a “press conference,” to publicize the results of an S.E.I.U. survey; but, rather, was intended to allow union members to show their support for the upcoming contract negotiations and to protest Kaiser’s employment practices by picketing in flagrant violation of the Act. Thus Respondent’s conduct meets the Board’s test as to picketing “the posting by a labor organization . . . at the approach to a place of business to accomplish a purpose which advanced the cause of the union.” *Stoltz Land Co.*, 156 NLRB 388 (1965). The General Counsel further argues that any reliance by Respondent on *Debartolo*<sup>4</sup> or other cases involving permissible handbilling or picketing under Section 8(b)(4) or 8(b)(7)(C) is misplaced inasmuch as those provisions do not, deal with the unique circumstances presented by health care institutions and do not, therefore, require the same balancing of interests mandated by the health care amendments.

#### 2. Respondent’s position

Respondent contends that its January 7 event was simply a press conference on a public sidewalk in front of a hospital entrance, where there were union members holding signs in furtherance of the press conference’s purely informational message, and is therefore protected speech akin to handbilling, rather than activity which constitutes “picketing.” Specifically, Respondent argues, its conduct did not meet the two necessary requisites of picketing—patrolling and the broadcasting of a labor dispute. In this regard, Respondent contends that, for activity to be considered patrolling, employees must (1) march in unison or form a traditional picket line, or (2) conduct surveillance of a area and create “confrontation” with others. Since there was neither marching nor confrontation, Respondent argues, there was no “picketing.” Further, Respondent contends, there must be a broadcasting of a labor dispute, or of an attempt to influence employees or customers to withdraw work or business, or of the union’s desire to represent employees. Therefore, according to Respondent, in the absence here of either patrolling or broadcasting of the labor dispute, there was no picketing and hence no violation of Section 8(g). *NLRB v. Teamsters Local 182 (Woodard Motors)*, 135 NLRB 851 (1962), *affd.* 314 F.2d 53 (1963); *United Hospitals of Newark*, 232 NLRB

443 (1977); *Service Employees Local 200 (Eden Park)*, 263 NLRB 400 (1982); *NLRB v. Furniture Workers (Jamestown Sterling Corp.)*, 337 F.2d 936 (2d Cir. 1964); *Retail Wholesale Union District 1199 (South Nassau Communities Hospital)*, 256 NLRB 74 (1981); *Retail Wholesale Union District 1199 (Parkway Pavilion Healthcare)*, 222 NLRB 212 (1976); *Typographical Union 570 (Kansas Color Press)*, 169 NLRB 279 (1968). Finally, Respondent argues, since its activity cannot constitute “picketing” or “patrolling,” the press conference is more akin to handbilling which is specifically protected speech. *Debartolo Corp.*, *supra* at 1403–1404.

### C. Conclusions

I find Respondent’s arguments unpersuasive. Section 8(g) of the Act provides in relevant part:

A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention . . . .

The Board has concluded that Congress intended that the 10-day provision of Section 8(g) be interpreted according to its literal meaning and therefore any of the described conduct is violative of that provision unless the requisite notice is given. The purpose behind this notice provision is to provide health care institutions with sufficient time to make arrangements for continuing patient care during the labor dispute. *Retail Wholesale Union District 1199 (Parkway Pavilion Healthcare)*, 222 NLRB 212 (1976); *Orange Belt District Council of Painters 48 (St. Joseph Hospital)*, 243 NLRB 609, 611–612 (1979). Therefore, the Board has concluded that the notice requirement applies to all forms of picketing since any picketing may induce actions by others regardless of the picketers’ purpose, thereby creating the risk that the delivery of health services will be disrupted. Contrary to Respondent’s contentions,

this requirement of notice is not an impermissible restraint on the constitutionally protected right of speech. First amendment guarantees are not absolute and must often be balanced against other public interest. . . . Here, the public interest in continuous health care is balanced against the right to picket as an exercise of free speech. The result of the balancing is simply the requirement that 10 days written notice be given prior to engaging in any form of picketing so that the health care institution may have the time to prepare for possible disruptions of patient care. Such a restraint is reasonable and does not result in a construction of Section 8(g) which is inconsistent with the first amendment. [*Retail Wholesale Union District 1199 (United Hospitals of Newark)*, 232 NLRB 443 (1977).]

It is clear that Respondent’s January 7 event was a press conference which purpose was, at least partially, to publicize the results of its survey. However, Respondent chose to hold the press conference at an entrance to a health care institution and to display signs which identified Respondent and could reasonably be considered by employees, patients, and the public as proclaiming its disagreement with the staffing

<sup>4</sup> *Edward J. Debartolo Corp. v. Fla. Gulf Coast Bldg. & Construction Trades*, 485 U.S. 568 1403–1404 (1988).

levels of that particular health care institution. Therefore, regardless of Respondent's intentions, the presence of persons carrying such signs at the hospital entrance could induce action disruptive of patient care. Moreover, the press packet distributed to the media specifically referred to the staffing levels at Kaiser, Respondent's status as representative of the Kaiser nurses, and Respondent's preparations to negotiate a new collective-bargaining agreement with Kaiser. In these circumstances, I conclude that on January 7, Respondent was engaged in picketing at the Sunset Boulevard entrance of Kaiser Hospital. See *Retail Wholesale Union District 1199 (South Nassau Communities Hospital)*, 256 NLRB 74 (1981). Accordingly, I find that Respondent violated Section 8(g) of the Act by engaging in such picketing without giving the notice mandated by that section.

#### CONCLUSIONS OF LAW

1. Kaiser Foundation Hospital is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Kaiser Foundation Hospital is a health care institution within the meaning of Section 2(14) of the Act.

3. Respondent, American Foundation of Nurses, Local 535, S.E.I.U., is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

4. By picketing at the premises of Kaiser Foundation Hospital, located at 4867 Sunset Boulevard in Los Angeles, California, without first giving 10 days written notice to Kaiser Foundation Hospital and to the Federal Mediation and Conciliation Service, Respondent has violated Section 8(g) of the Act.

5. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondent has engaged in, and is engaging in, an unfair labor practice in violation of Section 8(g) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>5</sup>

#### ORDER

The Respondent, American Federation of Nurses, Local 535, S.E.I.U., its officers, agents, successors, and assigns, shall

<sup>5</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

1. Cease and desist from engaging in any strike, picketing, or other concerted refusal to work at Kaiser Foundation Hospital, or any other health care institution, without notifying in writing Kaiser Foundation Hospital, or such other health care institution, and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of that intention.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices, meeting halls, and all other places where notices to its members are customarily posted, copies of the attached notice marked "Appendix."<sup>6</sup> Copies of said notice, on forms provided by the Regional Director for Region 31, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish to the Regional Director for Region 31 signed copies of the aforesaid notice for posting by Kaiser Foundation Hospital, if it is willing, in places where notices to its employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

<sup>6</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES AND MEMBERS

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in any strike, picketing, or other concerted refusal to work at Kaiser Foundation Hospital, or any other health care institution, without notifying, in writing, any such health care institution, and the Federal Mediation and Conciliation Service, not less than 10 days prior to such action, of that intention.

AMERICAN FEDERATION OF NURSES, LOCAL  
535, S.E.I.U.